

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Georgia Rochon	Team: Squad #2	CCRB Case #: 201904944	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/14/2019 6:40 PM	Location of Incident: East 179th Street and Hughes Avenue	Precinct: 48	18 Mo. SOL 11/14/2020	EO SOL 7/1/2021	
Date/Time CV Reported Fri, 06/07/2019 3:31 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/07/2019 3:31 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Sandra Martinez	04343	955139	048 PCT
2. SGT Ayotunde Adeniyi	01246	934370	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Linda Woods	05930	951006	048 PCT
2. POF Christine Oakley	06266	961025	048 PCT
3. POM Luis Alicea	09537	951489	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Sandra Martinez	Discourtesy: Police Officer Sandra Martinez spoke discourteously to § 87(2)(b)	
B.SGT Ayotunde Adeniyi	Abuse: Sergeant Ayotunde Adeniyi stopped § 87(2)(b)	
C.SGT Ayotunde Adeniyi	Force: Sergeant Ayotunde Adeniyi used physical force against § 87(2)(b)	
D.POF Sandra Martinez	Force: Police Officer Sandra Martinez used physical force against § 87(2)(b)	

Case Summary

On June 7, 2019, § 87(2)(b) filed this complaint with the CCRB via the call processing system.

On May 14, 2019, at approximately 6:40 p.m., § 87(2)(b) walked from his house, located at 2023 Hughes Avenue in the Bronx, to his daughter's apartment, located at § 87(2)(b) in the Bronx. His daughter was not home, so he turned around to return home. He walked past a marked police vehicle located at the corner of East 179th Street and Hughes Avenue. While walking past the police vehicle, § 87(2)(b) used the word, "Fuck," although the context in which he did is disputed. Police Officer Sandra Martinez of the 48th Precinct allegedly responded, "What the fuck did you say?" to § 87(2)(b) from inside the vehicle (**Allegation A—Discourtesy—Word—§ 87(2)(g)**). § 87(2)(b) responded, "I don't fuck with police."

Sergeant Ayotunde Adeniyi of the 48th Precinct walked around the back of the police vehicle and approached § 87(2)(b) while allegedly telling § 87(2)(b) to, "Get against the wall," (**Allegation B—Abuse of Authority—Stop—§ 87(2)(g)**). § 87(2)(b) did not do so, and Sergeant Adeniyi then punched § 87(2)(b) in the face (**Allegation C—Force—Physical Force—§ 87(2)(g)**). Police Officer Martinez, Police Officer Linda Woods and Police Officer Christine Oakley of the 48th Precinct observed Sergeant Adeniyi engaged in a physical struggle, and joined him in apprehending § 87(2)(b) in the course of which Police Officer Martinez punched § 87(2)(b) (**Allegation D—Force—Physical Force—§ 87(2)(g)**). § 87(2)(b) was ultimately arrested and charged with § 87(2)(b) (Board Review 09).

Footage from the apartment building at § 87(2)(b) in the Bronx was obtained in the course of this investigation. The original footage is located in IA #27 (Board Review 06), transcribed in IA #28 (Board Review 07) and the relevant portion is sub-clipped in IA #30 (Board Review 08).

Findings and Recommendations

Allegation (A) – Discourtesy: Police Officer Sandra Martinez spoke discourteously to § 87(2)(b)

§ 87(2)(b) provided a telephone statement on June 13, 2019 (Board Review 04) and was interviewed at the CCRB on June 18, 2019. He provided a follow up telephone statement on June 25, 2019 (Board Review 05). Police Officer Martinez was interviewed on June 28, 2019. Police Officer Oakley was interviewed at the CCRB on July 22, 2019. Sergeant Adeniyi and Police Officer Woods were interviewed on July 30, 2019.

§ 87(2)(b) testified that he was walking from his apartment to his daughter's apartment when he observed a marked police vehicle on Hughes Avenue at the intersection of Hughes Avenue and East 179th Street in the Bronx. He did not interact with anyone inside the vehicle at this time. He proceeded to his daughter's apartment, where he was unable to locate her. He walked back to his apartment, and muttered, "Damn where the fuck is she at," while walking past the marked police

vehicle. He did not make any gestures with his hands at this time. Police Officer Martinez, allegedly sitting in the passenger seat of the vehicle, said, “What the fuck did you just say?” to § 87(2)(b) § 87(2)(b) responded, “I don’t fuck with police” and continued walking.

On May 14, 2019, Sergeant Adeniyi was working as the Anti-Crime supervisor, with Police Officer Martinez as his operator. They drove to East 179th Street and Hughes Avenue in the Bronx to check on Police Officer Woods and Police Officer Oakley, who were assigned to a fixed post at the intersection. Upon arriving, Sergeant Adeniyi exited his vehicle, and approached Police Officer Woods and Police Officer Oakley. He did not recall whether Police Officer Martinez exited their vehicle, but stated that he spoke with Police Officer Woods and Police Officer Oakley for approximately two minutes before he observed § 87(2)(b) walk past yelling, “Fuck the NYPD,” and “Suck my dick motherfuckers,” and raising his middle fingers. He did not hear any officer say, “What the fuck did you just say,” to § 87(2)(b).

Police Officer Oakley testified that § 87(2)(b) initially walked past while saying, “Fuck the police,” before Sergeant Adeniyi arrived. She further alleged that he made shooting noises and mimicked shooting a firearm with his hand while walking past on this first occasion. She stated that neither she nor Police Officer Woods said anything to § 87(2)(b) at this time because civilians often curse out police officers. Approximately five minutes later, Sergeant Adeniyi approached Police Officer Woods and Police Officer Oakley (without Police Officer Martinez), and spoke to them briefly. At this time, § 87(2)(b) returned, and continued to make shooting noises and gestures, and say, “Suck my dick,” and “Fuck the police.” No officer asked § 87(2)(b) § 87(2)(b) “What the fuck did you just say.”

Police Officer Woods’ § 87(2)(g) did not recall § 87(2)(b) saying, “Fuck the NYPD,” or “Suck my dick,” or making any gestures, although her window was open and she was sitting in the passenger seat, closest to the sidewalk on which § 87(2)(b) was walking. While she knew that § 87(2)(b) said something while walking past, she could not say what. She did not ask § 87(2)(b) § 87(2)(b) “What the fuck did you just say,” and stated that while Sergeant Adeniyi asked § 87(2)(b) § 87(2)(b) “What’d you say, come here for a second, let me talk to you,” no officer used the word “Fuck.” Police Officer Woods’ testified that, while people were present on the sidewalk when § 87(2)(b) made his comments, they had not gathered into a crowd and were not involved.

Police Officer Martinez testified that she remained in the vehicle after Sergeant Adeniyi exited, and that she first observed § 87(2)(b) from inside her police vehicle, which was parked on East 179th Street, on the opposite side of Hughes Avenue from the marked police vehicle. She saw § 87(2)(b) § 87(2)(b) flail his arms and heard him speaking in a loud voice, but could not tell what he was saying. She did not see him make any sort of threatening gesture. She did not exit the vehicle until later in the incident, and did not ask § 87(2)(b) “What the fuck did you just say?”

The footage obtained from § 87(2)(b) § 87(2)(b) is blurry and does not have audio. However, it is possible to make out § 87(2)(b) putting his hand in the air, possibly with his middle finger extended (Board Review 08).

§ 87(2)(g)

Allegation (B) – Abuse of Authority: Sergeant Ayotunde Adeniyi stopped § 87(2)(b)

Allegation (C) – Force: Sergeant Ayotunde Adeniyi used physical force against § 87(2)(b)

§ 87(2)(b) testified that, as he continued walking towards his house, Sergeant Adeniyi “charged” at him from behind, and directed him to, “Get against the wall.” § 87(2)(b) responded, “For what, for what?” and put his hands up in front of his face. Sergeant Adeniyi grabbed § 87(2)(b)’s shirt, pushed him towards the wall, and hit him twice in the left eye with his right fist. § 87(2)(b) did not swing at Sergeant Adeniyi, and did not make any movements other than put his hands in front of his face and duck his head to avoid being punched. Sergeant Adeniyi then brought § 87(2)(b) to the ground. § 87(2)(b) believed that Sergeant Adeniyi punched him a third time on the left side of his face once he was on the ground.

Sergeant Adeniyi’s testimony differed from § 87(2)(b) s. § 87(2)(g) Sergeant Adeniyi stated that he approached § 87(2)(b) to see if he was alright, because he believed he could have been an emotionally disturbed person based on the statements and gestures he had made. Sergeant Adeniyi had no intention to arrest § 87(2)(b) at the point that he approached him, and did not speak to Police Officer Oakley or Police Officer Woods about § 87(2)(b) prior to approaching him. Sergeant Adeniyi walked towards § 87(2)(b) and said, “Hey, what’s going on?” and put his left hand out towards § 87(2)(b). § 87(2)(b) slapped Sergeant Adeniyi’s arm down, then put his fists up at chest level. At this point, Sergeant Adeniyi determined that § 87(2)(b) was to be arrested, and struck § 87(2)(b) in the face with his right hand. He and § 87(2)(b) then began to struggle, and Sergeant Adeniyi attempted to control § 87(2)(b)’s arms to handcuff him.

Sergeant Adeniyi testified that there were people present when § 87(2)(b) made his initial statements, and that once § 87(2)(b) slapped his hand away, the people present in the street became involved in the situation by saying things like, “Why are you doing that?”

In his memo book, Sergeant Adeniyi writes that § 87(2)(b) refused a lawful order to stop, and that when Sergeant Adeniyi attempted to physically stop § 87(2)(b), § 87(2)(b) slapped his arms away and took a fighting stance (Board Review 16). In the Threat, Resistance and Injury (TRI) report he prepared, Sergeant Adeniyi acknowledges using a hand-strike and a takedown in order to defend himself, other members of service, to stop a fleeing suspect and to overcome the suspect’s resistance or aggression (Board Review 15).

Police Officer Oakley testified that Sergeant Adeniyi walked towards § 87(2)(b) without providing her or Police Officer Woods any information about what he intended to do. She was unable to observe or hear Sergeant Adeniyi’s initial interaction with § 87(2)(b) but heard a “commotion” shortly after Sergeant Adeniyi left the vehicle, at which point she exited and

observed § 87(2)(b) and Sergeant Adeniyi throwing punches at each other. She observed § 87(2)(b) punch Sergeant Adeniyi in the chest. She approached to assist Sergeant Adeniyi. Police Officer Oakley stated that a crowd began to gather in the vicinity at around the time that she exited her vehicle.

Police Officer Woods testified that Sergeant Adeniyi walked towards § 87(2)(b) without providing any information as to his intentions. She did not observe any interaction Sergeant Adeniyi had with § 87(2)(b) until she heard yelling and exited the vehicle, at which point she observed § 87(2)(b) and Sergeant Adeniyi struggling. She did not observe either man throw a punch.

Police Officer Martinez testified that she returned to looking at her phone after initially observing § 87(2)(b). Approximately ten seconds later, she looked up and observed § 87(2)(b) and Sergeant Adeniyi “fighting.” Sergeant Adeniyi was grabbing § 87(2)(b)’s upper body, and § 87(2)(b) was flailing his arms and attempting to punch Sergeant Adeniyi. She did not recall seeing any crowd gathered at this point, but stated that 10 to 15 civilians began to gather as she exited the vehicle and approach Sergeant Adeniyi to offer assistance.

While the footage from § 87(2)(b) does not contain audio, and thus cannot provide insight into what was said during the incident, it does portray relatively clearly the events the unfolded. As discussed above, at one second into the clip of the footage located in IA #30 (Board Review 08), § 87(2)(b) is seen walking around the corner and making some unintelligible gesture with his hands up. Shortly thereafter, after § 87(2)(b) walks past the police vehicle, Sergeant Adeniyi approaches § 87(2)(b) from behind at a quickened pace. As Sergeant Adeniyi approaches § 87(2)(b) at 8 seconds into the footage, § 87(2)(b) stands with his arms splayed outwards (not in front of his body in the “fighting stance” described by Sergeant Adeniyi). Because the footage is shot from a distance, § 87(2)(b) and Sergeant Adeniyi are in close proximity, and events are unfolding quickly, it is not fully clear what unfolds in the next second. However, it appears that at nine seconds into the footage, Sergeant Adeniyi puts his hand out, and then he and § 87(2)(b) immediately begin scuffling. Sergeant Adeniyi appears to punch § 87(2)(b) in the head before § 87(2)(b) throws any punch at Sergeant Adeniyi. The entire interaction unfolds over the course of approximately 11 seconds. Two additional civilians are visible during this 11 second period, both of whom are walking down the sidewalk and continue walking as the event unfolds. Later in the footage, once additional officers are involved, a few civilians can be seen gathered nearby.

§ 87(2)(b)’s arrest report states that, at the time and place of occurrence, “While approaching defendant, defendant did take a fighting stance against officer, refusing numerous lawful orders to stop. Defendant did act in an aggressive violent manner by flailing his arms, pushing officers hands away and refusing multiple lawful order to put hands behind his back causing public alarm and annoyance and a crowd to gather” (Board Review 09).

§ 87(2)(b) was later brought to § 87(2)(b), where he reported eye pain stemming from a physical assault by police officers. He was given a CAT Scan, and swelling, but no orbital fracture, was observed (Privileged Documents 01).

To stop an individual, an officer must have reasonable suspicion that the individual is committing, has committed or is about to commit a crime (People v. Debour, 40 N.Y.2d 210 [1976]) (Board Review 11). In People v. Martinez, 80 N.Y.2d 444 (1992), the court made clear that a stop occurs whenever an individual's freedom of movement is significantly impeded. Such a restriction occurs when officers pursue a person fleeing from police contact (Board Review 17).

§ 87(2)(b) was ultimately charged with resisting arrest, along with the first three subsections of New York State Penal Law Code 240.20, which state that a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof (1) she engages in fighting or in violent, tumultuous or threatening behavior, (2) she makes unreasonable noise, or (3) in a public place, she uses abusive or obscene language, or makes an obscene gesture (Board Review 10).

The NYPD Office of the Deputy Commissioner's Legal Bureau Bulletin Vol. 47, No. 2 (February 2017) further clarifies the circumstances under which a person may be charged with disorderly conduct, particularly in regard to defining "public inconvenience, annoyance or alarm." It states that the public harm standard is not met unless and until the exchange in question extends beyond that between the person involved and an officer, and becomes "a potential or immediate public concern," making clear that a verbal or gestural dispute between an officer and a civilian is not sufficient for an arrest for disorderly conduct in the absence of civilian bystanders whom have becoming agitated or whom the subject intends to agitate by his actions (Board Review 12).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Patrol Guide Procedures 221-01 (Board Review 13) and 221-02 (Board Review 14) allow officers to use force when it is reasonable to ensure the safety of a member of the service, or when it is reasonable to place a person in custody. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to the subject, members of service or bystanders, whether the subject is actively resisting custody, whether the subject is attempting evade arrest by flight, the number of subjects in comparison to the number of members of service, size, age and condition of the subject in comparison to the member of service, subject's violent history if known, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence.

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) – Force: Police Officer Sandra Martinez used physical force against § 87(2)(b)

§ 87(2)(b) testified that as Sergeant Adeniyi brought him to the ground, Police Officer Martinez approached. Once he was on the ground, Police Officer Martinez punched him once on the right side of his neck. He was then handcuffed and transported to the stationhouse where he ultimately requested medical attention.

Sergeant Adeniyi testified that he brought § 87(2)(b) to the ground with the assistance of additional officers, who had arrived during the struggle. He did not recall whether Police Officer Martinez, or any other officer, struck § 87(2)(b). § 87(2)(b) was handcuffed while on the ground, during which time he resisted by

Police Officer Martinez testified that, upon reaching Sergeant Adeniyi and § 87(2)(b) she observed that Police Officer Woods and Police Officer Oakley were assisting in apprehending § 87(2)(b) and that he was flailing his arms. She attempted to control § 87(2)(b)'s upper body, and he pushed her hands away. Police Officer Martinez recalled punching § 87(2)(b) before he was brought to the ground, but did not recall where she hit him. Once § 87(2)(b) was brought to the ground, she did not strike him and did not see any other officer do so.

Police Officer Oakley recalled that she, Police Officer Woods and Police Officer Martinez all approached § 87(2)(b) and Sergeant Adeniyi, and that all involved fell to the ground when she tripped over § 87(2)(b). She believed that Police Officer Woods and Police Officer Martinez made some sort of physical contact with § 87(2)(b) before they fell to the ground but did not recall what kind.

Police Officer Woods testified that she grabbed § 87(2)(b)'s arms in order to handcuff him. She stated that Police Officer Martinez arrived while § 87(2)(b) was still standing, but she did not know whether Police Officer Martinez made physical contact with § 87(2)(b) at this point. She testified that she did not know whether § 87(2)(b) was brought to the ground forcibly or whether he fell.

All four officers involved prepared Threat, Resistance and Injury Reports (Board Review 15). In hers, Police Officer Martinez acknowledged using a hand-strike against § 87(2)(b) for self-defense and defense of another member-of-service, as did Sergeant Adeniyi. Police Officer Woods and Police Officer Oakley acknowledged using a forcible takedown.

The footage of the incident shows Police Officer Martinez, Police Officer Woods and Police Officer Oakley rushing to Sergeant Adeniyi's aid, and participating in the effort to control § 87(2)(b). § 87(2)(b) remains standing for a number of seconds before being brought to the ground. The footage is blurry, and does not rule out the possibility that Police Officer Martinez struck § 87(2)(b) either while he was standing or once he was on the ground (Board Review 08).

Patrol Guide Procedures 221-01 (Board Review 13) and 221-02 (Board Review 14) allow officers to use a reasonable degree of force when it is reasonable to ensure the safety of a member of the

service, or when it is reasonable to place a person in custody.

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 01).
- Sergeant Adeniyi has been a member-of-service for 15 years and has been a subject in six additional CCRB complaints and 13 allegations, none of which were substantiated.

§ 87(2)(g)
[REDACTED]

- Police Officer Martinez has been a member-of-service for six years and has been a subject in nine additional CCRB complaints and 23 allegations, of which one was substantiated
 - 201805676 involved a substantiated allegation of a frisk. The Board recommended charges, and the NYPD has yet to issue a final discipline.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On October 10, 2019, a request for any and all Notice of Claims filed by § 87(2)(b) in regard to the incident was submitted to the New York City Office of the Comptroller. The case file will be updated with any response upon receipt (Board Review 02).
- The Bronx District Attorney declined to prosecute § 87(2)(b) in regard to his arrest in this incident. The arrest was subsequently sealed.

§ 87(2)(b)
[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date